

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CHARLES ELLIS SHIRLEY, #2071816

VS.

TDCJ-CID, ET AL.

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CIVIL ACTION NO. 4:16cv578

ORDER OF DISMISSAL

This case was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the prisoner civil rights case filed pursuant to 42 U.S.C. § 1983 should be dismissed without prejudice for failure to prosecute. Plaintiff filed objections. In Plaintiff's objections, he contends that he should not be required to complete the standardized § 1983 form since he has filed numerous cases with the Court previously. He asserts that the Court should examine his prior cases and pull the required information from them.

Plaintiff also alleges he was unable to obtain the standardized form. However, the Clerk of the Court forwarded a standardized § 1983 form to Plaintiff on December 2, 2016, for his convenience although the Choice Moore Unit in Bonham, Texas, represents that the forms are available to inmates. Notwithstanding the Court's provision of the form, Plaintiff still failed to submit the standardized form. A district court may dismiss an action for failure to prosecute or to comply with any order of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988); Fed. R. Civ. P. 41(b). Plaintiff failed to comply with the Court's Orders.

In the interest of justice, the Magistrate Judge permitted Plaintiff an opportunity to comply. Instead, Plaintiff filed an interlocutory appeal, at which point the case was stayed and administratively closed. On June 5, 2017, the United States Court of Appeals for the Fifth Circuit

dismissed Plaintiff's interlocutory appeal. On September 12, 2017, the instant case was reopened. As of today's date, Plaintiff still has not complied with the Court's Orders from September 28, 2016, and December 2, 2016, to submit a standardized § 1983 civil rights form. He has failed to prosecute his case.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of the case, has been presented for consideration. The Court has conducted a *de novo* review of the objections raised by Plaintiff to the Report and concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** without prejudice. Finally, it is

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 17th day of October, 2017.

A handwritten signature in black ink, reading "Amos Mazzant", is written over a horizontal line.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE